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5 Honorable Richard Jones  
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7 **UNITED STATES DISTRICT COURT**  
8 **WESTERN DISTRICT OF WASHINGTON**  
9 **AT SEATTLE**

10 KYLE LYDELL CANTY,

Plaintiff,

11 vs.

12 CITY OF SEATTLE, et al.,

Defendants.

13 NO. 2:16-CV-01655-RAJ-JPD

CITY DEFENDANTS' RESPONSE TO  
PLAINTIFF'S PROPOSED MOTION  
PURSUANT TO 42 C.F.R. 2.23  
VIOLATIONS

NOTED ON MOTION CALENDAR:  
OCTOBER 6, 2017

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15 **I. RELIEF REQUESTED**

16 Defendants City of Seattle, Officer Marshall Coolidge, Sean Culbertson, Timothy  
17 Renihan and Officer Hancock (City of Seattle Defendants) request the Court deny Plaintiff's  
18 motion entitled, "Plaintiff's Proposed Motion Pursuant to 42 C.F.R. 2.23 Violations." Dkt.  
19 119. Plaintiff alleges that the Defendants wrongfully obtained his health care records without  
20 his consent in violation of 42 C.F.R. § 2.23, and seeks various forms of relief. The protected  
21 health information at issue is mental health information, not substance abuse treatment  
22 information, and is not being used in a criminal prosecution and therefore is not covered by 42  
23 C.F.R. § 2.23. As a result, Plaintiff's motion fails and must be denied. The City Defendants  
24 also join in the response to this motion filed by the King County Defendants. *See* Dkt. 126.

## II. FACTS RELEVANT TO MOTION

2 Plaintiff has filed this § 1983 action against the City of Seattle, several of its police  
3 officers, King County, and two of its mental health professionals related to his involuntary  
4 detention and commitment for mental health treatment. The King County Defendants filed  
5 Plaintiff's mental health records in their possession under seal in response to Plaintiff's motion  
6 challenging the Defendants' assertion of qualified immunity. *See* Dkt. 89, 89-1, 90, 92, 94.  
7 The records filed by King County are the only medical records the City Defendants have for  
8 Plaintiff, as Plaintiff has refused to provide his medical records, either by producing them in  
9 discovery or by signing authorizations to obtain such records. *See* Dkt. 122 (Declaration of  
10 Gregory E. Jackson), ¶ 3. Plaintiff did not respond to King County's request for a conference  
11 or to its motion to seal his mental health records. Instead, Plaintiff filed this motion weeks later  
12 to allege violations of Codes of Federal Regulations.

### III. ARGUMENT

## **42 C.F.R. § 2.23 Is Inapplicable To Plaintiff's Mental Health Records**

Plaintiff claims the Defendants' access to his protected health information violates 42 C.F.R. § 2.23. Plaintiff's reliance on 42 C.F.R. § 2.23 is misplaced. This federal regulation permits providers to give patients access to their own substance abuse treatment records, and restricts the use of such information in initiating or substantiating criminal prosecutions. 42 C.F.R. § 2.12, 2.23. The records at issue here are not substance abuse treatment records but mental health records not covered by the regulation Plaintiff cites. The records also are not being used in a criminal prosecution, which the regulation restricts. Even if this federal regulation applied to the records at issue here, it would not preclude the disclosure of Plaintiff's health records in this personal injury action. *See Mitchell v. Mt. Hood Meadows Oreg.*, 195 Or. App. 431, 439, 99 P.3d 748 (2004) (federal regulations dictating confidentiality of drug treatment records did not apply to plaintiff's subpoenaed medical records). Plaintiff's

1 claim that the Defendants have violated 42 C.F.R. § 2.23 is unsupported by fact and law and  
2 his motion should be denied.

3 **IV. CONCLUSION**

4 For all the foregoing reasons, Plaintiff's motion alleging violations of 42 C.F.R. 2.23  
5 should be denied.  
6

7 DATED this 2nd day of October, 2017.

8 s/ Amee J. Tilger

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16 Attorneys for Defendants City of Seattle,  
17 Officer Marshall Coolidge, Sean Culbertson,  
18 Timothy Renihan and Officer Hancock

## **CERTIFICATE OF SERVICE**

I certify that on the 2nd day of October, 2017, I caused a true and correct copy of this document to be served on the following in the manner indicated below:

<p>Kyle Lydell Canty, Inmate No. 401358        WA State Department of Corrections        P.O. Box 900        Shelton, WA 98584</p> <p><a href="mailto:DOCWCCInmateFederal@DOC1.WA.GOV"><u>DOCWCCInmateFederal@DOC1.WA.GOV</u></a></p> <p>Pro Se Plaintiff</p>	<p>( X ) Electronic Service</p>
<p>Samantha D. Kanner, WSBA #36943        Deputy Prosecuting Attorney        King County Prosecuting Attorney's Office        500 Fourth Avenue, 9<sup>th</sup> Floor        Seattle, WA 98104        (206) 296-8820</p> <p><a href="mailto:SamanthaKanner@kingcounty.gov"><u>SamanthaKanner@kingcounty.gov</u></a></p> <p>Attorney for King County</p>	<p>( X ) Electronic Service</p>

DATED this 2nd day of October, 2017, in Seattle, Washington.

s/ Courtney Grubb  
COURTNEY GRUBB Legal Assistant